

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3818 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RATHOD CHANDULAL MANGALDAS

Versus

PARMAR VIRCHANDBHAI KESHAVLAL

Appearance:

MR RR TRIPATHI for Petitioners

MR KIRIT I PATEL for Respondent No. 1

MS NANDINI JOSHI for Respondent No. 2, 3, 4

MR PB BHATT APP for Res.No.5.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/11/98

ORAL JUDGEMENT

Heard learned advocates Mr. R.R.Tripathi for the petitioners, Mr. K.I.Patel for respondent no.1-complainant, Ms. Nandini Joshi for respondents nos. 2 to 4 and the learned APP Mr. P.B.Bhatt for respondent no.5.

The present application under section 482 Cr.P.C. has been preferred by two of the five accused persons in M. Case No. 18/97 pending for investigation before Kasba Police Station of Mehsana Town. On 12th April, 1997, the respondent No.1 lodged a complaint against the present petitioners and the respondents nos. 2 to 4 alleging therein that the accused persons have forged a document (Mark 16/1) and thereby have sought to dispose of the property belonging to the complainant in discharge of the outstanding debt of the Kalyan Co-operative Bank, Kalol. It is also alleged that the petitioners herein have made false affidavits before the court hearing Execution Application No. 44/94 filed by the Kalyan Co-operative Bank, Kalol.

Mr. Tripathi has submitted that the petitioner no.1 (accused no.1) is the Manager of the Kalyan Co-operative Bank and the petitioner no.2 (the accused no.2) is the Clerk in the said Bank. He has submitted that the petitioners had no reason to oblige the respondents nos. 2 to 4 by forging the documents as alleged or by filing false affidavits. It was the accused nos. 2 to 4 who had produced the property-card while making an application for loan, and relying on the said document, the petitioners have filed the affidavits in question. He has, therefore, submitted that neither of the petitioners can be said to have conspired or have committed any offence as alleged in the complaint. He has further submitted that though a chargesheet has been filed against the respondents nos. 2 to 4, no such chargesheet has been filed against the petitioners. Thus, the petitioners not having committed any offence as alleged or otherwise, the complaint filed against the petitioners requires to be quashed and set aside.

I am unable to agree with the contentions raised by Mr. Tripathi. Mr. Bhatt, the learned APP has informed that in view of the ad-interim order made on 24th July, 1997, no investigation has been made into the complaint in so far as the petitioners are concerned. Merely because no investigation has proceeded yet, it can not be said that no offence has been committed by the petitioners herein. It would be too early to hold that the petitioners have not conspired with the respondents nos. 2 to 4 as alleged. The fact remains that the complaint does disclose commission of an offence by the petitioners herein. In view of the said allegations, the petitioners can not be said to have been falsely implicated as has been made out by Mr. Tripathi. It would be for the prosecution to establish that the petitioners were party to the conspiracy and that a wrong

statement was made on oath deliberately. The complaint,
therefore, can not be quashed at this stage.

Petition is, therefore, dismissed. Rule is
discharged. Interim relief is vacated.

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JOSHI